

Client: Byfield Consultancy
Source: The Times Educational Supplement (England) (Main)
Date: 26 August 2016
Page: 50
Reach: 37798
Size: 761cm2
Value: 9116.78

LEADERSHIP

How to balance the legal risks of the Prevent duty

Colleges must meet anti-extremism obligations while protecting freedom of speech and student relationships

FENELLA MORRIS AND JENNIFER THELEN

LAST YEAR, the government made colleges subject to a new obligation under the Counter-Terrorism and Security Act – the Prevent duty – aimed at stopping young people becoming involved in terrorism. Now Ofsted has warned that colleges are failing to comply with the duty, exposing them to legal action and placing students at risk. The inspectorate tells of students watching terrorist propaganda because of deficient firewalls on IT systems, and criticises those who fail to reprimand or offer support to these students.

Lecturers say it is difficult to know what the duty involves. They fear that it may be counterproductive, damaging trust between lecturers and multicultural student populations, impinging on academic freedom and stifling student debate.

How realistic is it to expect colleges to take on this obligation? What are the legal risks if they don't?

A college's duty under the act is to have "due regard" of the need to prevent students from being drawn into "terrorism". The guidance issued with the legislation explains that colleges are expected to focus on "extremism" as much as terrorism, since it is seen as the underlying cause. Staff must

be trained to identify students at risk of becoming radicalised, and colleges should use information obtained from their dealings with a student, sharing it with other agencies as part of a safeguarding process.

This use of student information will be troubling for any lecturer. The guidance advises that personal information may be shared to ensure that a person at risk of radicalisation is given support, but that its provisions do not authorise disclosures that would contravene data-protection legislation.

It will be a tough call to decide whether the risk of radicalisation justifies a disclosure, particularly where, if the student finds out, their relationship with the college – and perhaps relationships with other students – is likely to be impaired, with intrusive consequences for the student.

'I know it when I see it'

Colleges are required to promote and challenge opposition to "fundamental British values" – democracy, the rule of law, individual liberty and mutual tolerance and respect of different faiths and beliefs. This conjures up didactic images far from academic freedom.

Sometimes it will be difficult to simultaneously promote all the values. Any A-level politics student will tell you that their application to particular situations can lead to contradictions. Is defending the right to run for public office on an agenda of intolerance of Muslims' presence in the country – think of Donald Trump – promoting democracy or opposing mutual respect and tolerance?

What springs to mind is the phrase used by US Supreme Court justice Potter Stewart to describe obscenity – "I know it when I see it" – while admitting he could never define it. Even if that would work for an English judge, a college principal might get less sympathy trying to justify their assessment of whether something amounted to extremism in the same way. The problem is real: in a recent case concerned with whether a piece of writing constituted a terrorist publication, expert evidence was needed to help the judge decide.

If a college fails to prevent a student becoming involved in extremism, the legal consequences are uncertain. It is unlikely that courts will depart from their proceedings: teachers working at the Birmingham schools

FE bulletin

Ofsted reports

- Bosch Automotive Service Solutions – good
- Kingston College – good
- North West Community Services Training – good
- Waltham Forest London Borough Council – good
- Wokingham Council – good
- North Hertfordshire College – requires improvement
- DMT Business Services – inadequate
- The Shaw Trust – inadequate
- Tresham College of Further and Higher Education – inadequate

For daily updates on the latest Ofsted reports published in the FE and skills sectors, visit bit.ly/Ofstedwatch



Client: Byfield Consultancy
Source: The Times Educational Supplement (England) (Main)
Date: 26 August 2016
Page: 50
Reach: 37798
Size: 761cm2
Value: 9116.78



linked with the so-called Trojan Horse allegations faced action by the National College for Teaching and Leadership.

As for colleges, the act gives the secretary of state power to intervene directly in the event of a breach. This could happen if a college persistently, and despite warnings from Ofsted, failed to act on indicators of the risk of radicalisation. There is also the risk that a student pressurised by extremists at a college could allege harassment because of a failure to safeguard him or her.

FE SUBSCRIPTIONS

Try out **TES'** new FE print and digital subscription pack: just £1 for 4 weeks.

- Copy of **TES** delivered weekly by first-class post
- Access to **TES** FE digital edition through the **TES** app
- Access to the **TES** online CPD library
- Access to the UK's largest selection of education jobs
- Discounts on selected **TES** courses

Go to shop.tes.co.uk/FEtrial

These risks must be balanced against those arising from overzealous application of the duty. Colleges may find their efforts to suppress extremist views in conflict with their statutory obligations not to restrict freedom of speech and to promote academic freedom. They should be careful not to discriminate against groups of students or individuals and fall foul of equality legislation.

Discrimination danger

It may be just a matter of time before students mount a legal challenge to a college's decision to refuse to allow an external speaker considered to have extremist views. Colleges may also be challenged if they exclude a student because of the risk their proselytising poses to others. Similarly, restricting student organisations may attract claims of discrimination, never mind posing a threat to relationships.

In these early days of implementation, colleges may feel damned if they do and damned if they don't. Regardless, they are going to have to be careful to avoid damaging and expensive litigation. ●



Fenella Morris QC and Jennifer Thelen are barristers at 39 Essex Chambers



Client: Byfield Consultancy
Source: The Times Educational Supplement (England) (Main)
Date: 26 August 2016
Page: 50
Reach: 37798
Size: 761cm2
Value: 9116.78

Byfield Consultancy
thinking communicating leading

